

(Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations.)

**§ 18751. Procedure and Standards for Obtaining Exemption from Government Code**

**Section 87300, Requiring Adoption and Promulgation of a Conflict of Interest Code.**

(a) This section sets forth the procedure and standards by which the Fair Political Practices Commission will determine whether to grant an exemption from Government Code section 87300 to an agency for which the Commission is the code reviewing body. Other code reviewing bodies are encouraged to adopt the same or similar procedure and standards. Nothing in this section shall be construed to mean that a government agency is not required to adopt a conflict of interest code if it has not been granted an exemption.

(b) A governmental body qualifying as an agency, and therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code section 87300, or be included within another agency's Conflict of Interest Code, may submit a request to the Fair Political Practices Commission for exemption from that requirement if the Commission would be the agency's code reviewing body. Obtaining an exemption as provided in this regulation is the exclusive means by which an agency may obtain an exemption from the requirement to adopt and promulgate a Conflict of Interest Code. The term "agency" as used in this section means any state agency or local government agency with jurisdiction in more than one county.

(c) An exemption shall be granted to an agency by the Executive Director only if he or she finds:

(1) That if the agency were to adopt a Conflict of Interest Code, there would be no "designated employees," within the meaning of Government Code Sections 82019 and 87302(a),

subject to its provisions; or

(2) That the agency is, or within one year will be, inoperative and nonfunctioning; or

(3) That the agency is a committee, board, or commission that does not possess decisionmaking authority as defined in 2 Cal. Code Regs. section 18701(a)(1), and both of the following apply:

(A) The agency will not acquire real property in the foreseeable future; and

(B) The annual operating budget exclusive of salaries for the agency is less than \$ 150,000; or

(4) That good cause exists for granting an exemption due to extraordinary circumstances that indicate the burden on the agency of adopting a conflict of interest code is not warranted by the degree of likelihood that a conflict of interest may occur.

(d) An exemption may be granted to an agency or extended by the Executive Director on his or her own initiative or in response to a request by the agency. A request by an agency shall be signed by the chief executive officer or a legal representative of the agency and shall be accompanied by a statement of the alleged basis for a grant of exemption with supporting documentation, as described in subdivisions (e) through (g) of this regulation.

(e) A request for exemption under subdivision (c)(1) shall be accompanied by:

(1) A list of every position in the agency, including each officer, employee, member and consultant with the agency;

(2) A copy of the job description for each position listed in subsection (1) above;

(3) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;

(4) Identification of the person or body to whom the agency reports;

(5) A copy of the last annual or regular report submitted by the agency to the person or body to whom the agency reports;

(6) A detailed justification of the request for exemption including an explanation of why none of the positions listed in subsection (1) above, are designated employees. In preparing this justification, particular note should be taken of Government Code section 82019.

(f) A request for exemption under subdivision (c)(2) shall be accompanied by:

(1) A copy of the statutory or legal authority under which the agency ceased, or soon will cease, to operate or function;

(2) The date, time and place of the last meeting of the agency;

(3) Identification of the positions and names of any staff who continue to work for or represent the agency, whether salaried or unsalaried; and

(4) A detailed explanation of the reasons the agency is, or soon will be, inoperative and nonfunctioning.

(g) A request for exemption under subdivision (c)(3) shall be accompanied by:

(1) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;

(2) Identification of the person or body to whom the agency reports; and

(3) A copy of the last annual or regular report submitted by the agency to the person or body to whom the agency reports;

(h) Within 90 days after receiving a request for exemption, the Executive Director shall:

(1) Approve the request;

(2) Deny the request; or

(3) Return the request for additional information and resubmission within 60 days. Upon

resubmission, the Commission shall, within 60 days, either approve the request for exemption or deny the request.

(i) In the case of a newly created agency, the time limits prescribed by Government Code sections 87302.6 and 87303 for the members of a board or commission to file statements of economic interests, and for the agency to submit a proposed Conflict of Interest Code, shall be tolled while a request for exemption is under initial consideration by the Executive Director or reconsideration by the Commission, provided the request is submitted prior to the time limit expiring.

(j) When an exemption is granted, the Executive Director shall issue an exemption letter and transmit it to the requesting agency. The exemption letter shall state a legal and factual basis for the granting of an exemption. When an exemption is granted under subdivision (c)(4), the letter shall also describe the particular extraordinary circumstances that warrant the granting of an exemption under that subdivision. A copy of the exemption letter shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the exemption is granted, any interested party may submit a request that the grant of exemption be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

(k) When a request for exemption is denied, the Executive Director shall issue a letter denying the request for exemption, transmit it to the requesting agency, and establish a new deadline by which the agency requesting the exemption shall submit a proposed Conflict of Interest Code to the Commission, or be included within the Conflict of Interest Code of another agency. If the request is from a newly created agency having a board or commission whose

members are subject to the filing requirements imposed by Government Code section 87302.6, the letter denying the request for exemption shall also establish a new deadline, not exceeding 30 days from the date the letter is issued, by which the board or commission members shall file statements of economic interests pursuant to Government Code section 87200. A copy of the letter denying the exemption shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the request for exemption is denied, any interested party may submit a request that the denial be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

(l) An exemption granted under subdivision (c)(3) of this regulation does not constitute formal written advice or informal assistance pursuant to 2 Cal. Code Regs. sections 18329 and 18329.5 concerning the duty of an individual to file a statement of economic interests under the provisions of an existing Conflict of Interest Code.

(m) Upon being issued, an exemption shall remain in effect until the basis for the grant of exemption no longer exists or the expiration of 2 years, whichever occurs earlier. When an agency's exemption expires without being renewed on the Executive Director's own initiative, the agency shall either adopt and promulgate a Conflict of Interest Code pursuant to Government Code section 87300, submit a request for the exemption to be extended, or submit a new request for exemption.

(n) A request to extend an exemption need only consist of a declaration signed by the chief executive officer or a legal representative of the agency stating that the circumstances that served as the basis for the original grant of exemption have not changed. The request shall then be granted or denied according to the procedures set forth in subdivisions (h) through (k) of this

regulation, and if granted, subject to the provisions of subdivision (l) of this regulation, just as an original exemption.

Note: Authority cited: Sections 83108 and 83112, Government Code. Reference: Section 87300 et seq., Government Code.

## HISTORY

1. New section filed 7-28-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
3. Amendment of subsections (c), (e), repealer of former subsection (h) and relettering, and amendment of new subsections (h)-(j), repealer of subsection (l) and amendment of Note filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
4. Amendment of subsection (g) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
5. Amendment of section heading and section filed 12-29-2005; operative 1-28-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).